

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER PAPE, :  
Plaintiff, : Case No. 07 cv 5760 (RMB)

vs. : ECF Case

ELECTRONIC ARTS, INC. and :  
INETVIDEO.COM : **ANSWER**

Defendants. :  
: X

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Defendant Electronic Arts Inc. ("EA"), by its attorneys, Cooley Godward Kronish LLP, answers the claims asserted in Plaintiff's Complaint as follows:

1. Upon information and belief, admits the allegations of paragraph 1.
2. Upon information and belief, admits the allegations of paragraph 2.
3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.
4. Admits that EA is a California corporation, but denies that EA has its principal office in the Borough of Manhattan, County of New York, State of New York.
5. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.
6. In response to paragraph 6, repeats paragraphs 1-5 of this Answer, as if set forth fully herein.
7. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and avers that no copy of Plaintiff's "work of art" is annexed to the Complaint.
8. Denies the allegations of paragraph 8.

9. Admits that EA published a video game entitled “Freedom Fighters,” but otherwise denies the allegations of paragraph 9.

10. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 and avers that no copy of the “deposit Work” filed with the United States Copyright Office is annexed to the Complaint.

11. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE – FAIR USE**

12. EA denies that it infringed Plaintiff’s alleged copyright in his work, but asserts that if any material contained in the video game “Freedom Fighters” did infringe Plaintiff’s alleged copyright, the same was, at most, a fair use of Plaintiff’s allegedly copyrighted work, pursuant to Section 107 of the Copyright Act, 17 U.S.C. § 100, *et seq.*.

##### **SECOND AFFIRMATIVE DEFENSE – INNOCENT INFRINGEMENT**

13. EA denies that it infringed Plaintiff’s alleged copyright in his work, but asserts that if any material contained in the video game “Freedom Fighters” did infringe Plaintiff’s alleged copyright, the same was, at most, an innocent infringement of Plaintiff’s allegedly copyrighted work, pursuant to Section 405 of the Copyright Act, 17 U.S.C. § 100, *et seq.*.

##### **THIRD AFFIRMATIVE DEFENSE – SCÈNE À FAIRE**

14. EA denies that any of the material contained in the video game “Freedom Fighters” is substantially similar to Plaintiff’s allegedly copyrighted work, but even if the parties’ works were substantially similar, Plaintiff’s claims are barred by the scène à faire doctrine.

**FOURTH AFFIRMATIVE DEFENSE – MERGER**

15. EA denies that any of the material contained in the video game “Freedom Fighters” is substantially similar to Plaintiff’s allegedly copyrighted work, but even if the parties’ works were substantially similar, Plaintiff’s claims are barred by the merger doctrine.

WHEREFORE, Defendant demands judgment:

1. Dismissing Plaintiff’s claims in their entirety;
2. Awarding Defendant attorney’s fees and costs incurred in connection with Plaintiff’s Complaint;
3. Such other relief as the Court deems appropriate.

Dated: New York, New York  
October 24, 2007

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

/s/ John W. Crittenden

John W. Crittenden (JC-1053)

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*Attorneys for Defendant Electronic Arts Inc.*

**CERTIFICATE OF SERVICE**

I, Daniel Davis, hereby certify that I caused a true and correct copy of the foregoing Answer to be served and filed via the ECF court system in accordance with the local civil rules of the United States District Court for the Southern District of New York, this 24th day of October, 2007 upon:

Carl Kaminsky, Esq.  
135 Ocean Parkway  
Brooklyn, NY 11218

/s/ Daniel H. Davis

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Daniel H. Davis (DD-0090)